



ArentFox Schiff LLP

1301 Avenue of the Americas
42nd Floor
New York, NY 10019

212.484.3900 **MAIN**
212.484.3990 **FAX**

afslaw.com

Glenn Colton

Partner
212.484.3972 **DIRECT**
glenn.colton@afslaw.com

April 13, 2023

Via ECF

The Hon. Diane Gujarati
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Gentile, et al., 21-cr-00054 (DG)

Dear Judge Gujarati:

Further to our letter of February 24, 2023 [ECF No. 205] (the "February 24 Letter"), we respectfully submit this letter on behalf of our client, Jeffry Schneider, to provide the Court additional information in advance of the upcoming status conference on April 17, 2023 regarding various technical and discovery issues that have caused and will likely continue to cause substantial delays and difficulties in preparing for trial. While we are not currently seeking the Court's intervention to resolve the disputes or potential disputes listed below, and while we have been conferring and expect to continue to confer with the Government about these issues in an attempt to find solutions, we nonetheless wanted to apprise the Court of the status of these items as they are directly related to defendants' ability to prepare for trial.

First, as mentioned in our February 24 Letter, for months, the Government stated that its e-discovery vendor had insisted that native files for a large portion of the millions of documents produced to the defense are not available, only later to inform the defense that its vendor discovered it had made an error and that, at least as to the documents produced from the GPB searches, native files *were in fact* available. The Government has just recently produced native files for certain of those documents and we are working through various technical and logistical issues regarding the newly produced native files.

Second, unfortunately, we are running into a similar type of technological problem with respect to documents DOJ produced to the defense that it received from the SEC. Specifically, a substantial amount of metadata that we now understand was included in documents produced by GPB to the SEC appears to be missing from the versions of those same documents produced by DOJ to the defendants. We have recently corresponded with DOJ regarding this issue and asked that, like with the GPB search materials, DOJ once again press their vendor to make sure the vendor is providing accurate information and proper electronic document productions (which would necessarily include all available metadata).



The Hon. Diane Gujarati
April 13, 2023
Page 2

Third, we have been in discussions with the Government's firewall team regarding documents produced by GPB to the SEC (and in turn, by the SEC to DOJ) over which we believe Mr. Schneider and his wholly-owned company, Ascendant Capital LLC, have a privilege interest. We have been actively engaged with the government's firewall team but expect it will take some time to sort through our concerns since the privilege issues are complex, and assessing those issues in such a substantial production is made even more difficult by the myriad technical issues that plague that voluminous discovery.

Finally, we have requested that the Government produce certain specified documents that we understand the Government possesses and showed to witnesses but did not produce to the defense. The Government claims these documents are not discoverable, but in our view, the Government has taken inconsistent positions regarding its discovery obligations in order to suit its own interests (*i.e.*, the Government has by its own admission produced millions of documents as a result of its decision that it need not conduct a Rule 16 review but references the restrictions of Rule 16 when it selectively does not want to produce certain narrowly-defined requested materials).

Of course, we are happy to provide any further information to the Court at the Court's request, either before or during the upcoming status conference.

Respectfully submitted,

/s/ Glenn C. Colton
Glenn C. Colton

cc: All counsel of record via ECF